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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,800	01/28/2005	Yasushi Kawashiro	06854-0041	6764
22852	7590	10/20/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	
			MAIL DATE	DELIVERY MODE
			10/20/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,800

Applicant(s)

KAWASHIRO ET AL.

Examiner

MELVIN A. CARTAGENA

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-13 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki in view of US 7,114,635 to Yamada.

Suzuki shows a fluid delivery device as seen in Fig. 1, having a tubular shaped outlet portion 22, a valve element 11 with a thin-walled portion 10, a cylindrical valve support member 6, a vent opening, see Fig. 1, the thin-walled portion of the valve element extends through an orifice in the outlet portion and seals against the cylindrical valve support until pressure in the dispensed fluid deforms the valve wall open. The delivery device is integrally formed and mounted on the neck of a container 31. Suzuki is silent about using the dispenser as an eye dropper and using a filter element in the air vent. Yamada shows a dispenser for an eye solution having an air vent 75 with a filter 78, see Fig. 6. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Suzuki to include a filter in the air vent to maintained the fluid in aseptic condition, Since the medical fluid, especially medical eye drops are applied directly to the eye which is an especially sensitive organ in the human body, it is strictly required to maintain the fluid in aseptic condition instillation as taught by Yamada.

3. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki as modify by US 7,114,635 to Yamada as applied to claim 11 above and further in view of US 6,145,707 to Baudin.

The Suzuki-Yamada combination show all claimed features as discussed above except for the valve element or the outlet orifice being treated with an antibacterial treatment. Baudin shows a dispensing device as seen in Figs. 4 and 5, where the valve elements are treated with an antibacterial substance. It would have been obvious to a person with ordinary skill in the art at the time of the invention to modify the device of the Suzuki-Yamada combination by treating the outlet elements with an antibacterial substance to increase the protection of the product contained in the container as taught by Baudin.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,447,258 to Suzuki as modify by US 7,114,635 to Yamada as applied to claim 11 above and further in view of US 27,1889 to Underhill.

The Suzuki-Yamada combination show all claimed features as discussed above except for a fluid filter located upstream of the dispensing valve. Underhill shows a dispenser as seen in Fig. 1, having a fluid filter element 20 located upstream of dispensing valve. It would have been obvious to a person with ordinary skill in the art at the time of the invention to modify the device of the Suzuki-Yamada combination by adding a fluid filter located upstream the dispensing valve in view of Underhill to prevent particles to flow into the valve and affect the valve operation or flow into an user's eye.

Response to Arguments

5. Applicant's arguments with respect to claims 11-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754